

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

RICHARD BIONDA,

Plaintiff,

-against-

CITY OF NEW YORK, NEW YORK CITY POLICE  
OFFICER JAMES N. BAEZ, NEW YORK CITY  
POLICE OFFICER "JOHN DOE 1", NEW YORK  
CITY POLICE OFFICER "JOHN DOE 2" and NEW  
YORK CITY POLICE OFFICER "JOHN DOE 3",

Defendants.

Index No.

COMPLAINT

06 424  
FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
FEB - 1 2006  
BROOKLYN OFFICE  
SF

MATSUMOTO, M.J.

Plaintiff, RICHARD BIONDA, by his attorney, JAMES K. O'HALLORAN,  
complaining of the Defendants, respectfully shows and alleges as follows:

**FIRST:** This action is brought pursuant to 42 U.S.C. 1983 and 1988.

Jurisdiction is founded upon 28 U.S.C. 1331 and 1334. Plaintiff further invokes the pendent jurisdiction of this Court to hear and decide claims arising under state law.

**SECOND:** That at all times hereinafter mentioned, the Plaintiff, RICHARD BIONDA, was and still is a citizen and resident of the City and State of New York.

**THIRD:** That at all times hereinafter mentioned, the Defendant, CITY OF NEW YORK, was and still is a municipal corporation duly organized and existing under the laws of the State of New York.

**FOURTH:** That at all times hereinafter mentioned, the Defendant, CITY OF NEW YORK, was and still is a municipal corporation doing business in the State of New York.

**FIFTH:** Upon information and belief, at all times relevant to this complaint, the individual Defendant, NEW YORK CITY POLICE OFFICER "JAMES N. BAEZ", was and still is a police officer employed by the Defendant, CITY OF NEW YORK.

**SIXTH:** That upon information and belief and at all times hereinafter mentioned, the individual Defendant, P.O. JAMES N. BAEZ, was acting within the course of his employment and/or official policy, practice, custom or usage of the Defendant, CITY OF NEW YORK, and under color of state law, that is, under color of the Constitution, statutes, laws, ordinances, rules, regulations customs and usages of the United States, City and State of New York.

**SEVENTH:** Upon information and belief, at all times relevant to this complaint, the individual Defendant, NEW YORK CITY POLICE OFFICER "JOHN DOE 1", (whose identity is unknown and is referred to herein as "P.O. JOHN DOE 1") was and still is a police officer employed by the Defendant, CITY OF NEW YORK.

**EIGHTH:** That upon information and belief and at all times hereinafter mentioned, the individual Defendant, P.O. JOHN DOE 1, was acting within the course of his employment and/or official policy, practice, custom or usage of the Defendant, CITY OF NEW YORK, and under color of state law, that is, under color of the Constitution, statutes, laws, ordinances, rules, regulations customs and usages of the United States, City and State of New York.

**NINTH:** Upon information and belief, at all times relevant to this complaint, the individual Defendant, NEW YORK CITY POLICE OFFICER "JOHN DOE 2", (whose identity is unknown and is referred to herein as "P.O. JOHN DOE 2") was and still is a police officer employed by the Defendant, CITY OF NEW YORK.

**TENTH:** That upon information and belief and at all times hereinafter mentioned, the individual Defendant, P.O. JOHN DOE 2, was acting within the course of his employment and/or official policy, practice, custom or usage of the Defendant, CITY OF NEW YORK, and under color of state law, that is, under color of the Constitution, statutes, laws, ordinances, rules, regulations customs and usages of the United States, City and State of New York.

**ELEVENTH:** Upon information and belief, at all times relevant to this complaint, the individual Defendant, NEW YORK CITY POLICE OFFICER "JOHN DOE 3", (whose identity is unknown and is referred to herein as "P.O. JOHN DOE 3") was and still is a police officer employed by the Defendant, CITY OF NEW YORK.

**TWELFTH:** That upon information and belief and at all times hereinafter mentioned, the individual Defendant, P.O. JOHN DOE 3, was acting within the course of his employment and/or official policy, practice, custom or usage of the Defendant, CITY OF NEW YORK, and under color of state law, that is, under color of the Constitution, statutes, laws, ordinances, rules, regulations customs and usages of the United States, City and State of New York.

**THIRTEENTH:** That the Plaintiff sues the individual Defendants each in their individual and official capacities.

**FOURTEENTH:** That Notice of Intention to Sue, as required by Section 50 (e) of the General Municipal Law of the State of New York, was served by the Plaintiff upon the Defendant, CITY OF NEW YORK, on or about June 23, 2005, within 90 days after the cause of action arose; that on or about August 3, 2005, Plaintiff appeared for the 50-H hearing and same was conducted; that at least thirty (30) days have elapsed since the demand or claim upon which

this action is predicated was presented to the CITY OF NEW YORK for adjustment and that it has neglected and/or refused to make adjustment or payment thereof; and that this action is commenced within one year and ninety (90) days after the cause of action accrued.

**FIFTEENTH:** That 42 U.S.C. 1983 provides that every person who under color of any statutes, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law suit in equity, or other proper proceeding for redress.

**SIXTEENTH:** That on or about April 4, 2005, the Plaintiff was lawfully present at on a public highway, located in the County of Kings, City and State of New York.

**SEVENTEENTH:** That on or about April 4, 2005, while the Plaintiff was lawfully at the aforementioned place, the individual Defendants, NEW YORK CITY POLICE OFFICER JAMES N. BAEZ, NEW YORK CITY POLICE OFFICER JOHN DOE 1, NEW YORK CITY POLICE OFFICER JOHN DOE 2, NEW YORK CITY POLICE OFFICER JOHN DOE 3, without probable cause, unlawfully detained, arrested, imprisoned, handcuffed, frisked and physically searched the Plaintiff's body(s)/person(s), all without consent, permission, authority nor probable cause.

**EIGHTEENTH:** That no illegal item(s) or contraband were found on the Plaintiff's body or person.

**NINETEENTH:** That on or about April 4, 2005, the individual Defendants, NEW YORK CITY POLICE OFFICER JAMES N. BAEZ, NEW YORK CITY POLICE OFFICER JOHN DOE 1, NEW YORK CITY POLICE OFFICER JOHN DOE 2, NEW YORK CITY

POLICE OFFICER JOHN DOE 3, caused the Plaintiff to be arrested, under the laws of the City and State of New York.

**TWENTIETH:** That after being detained in jail false criminal charges were filed against Plaintiff. Plaintiff was caused to retain and pay for legal counsel to defend said charges. The charges were subsequently dismissed.

**AS AND FOR A FIRST CAUSE OF ACTION  
AGAINST THE INDIVIDUAL DEFENDANTS**

**TWENTY-FIRST:** That the Plaintiff repeats and realleges the allegations contained in paragraphs "**FIRST**" through "**TWENTIETH**" of the complaint with the same force and effect as if fully set forth herein.

**TWENTY-SECOND:** That upon information and belief, the Defendants' illegal and unlawful search of his person and property, his unlawful arrest, detainment, and imprisonment of the Plaintiff's body/person, was illegal, unreasonable, reckless, without a warrant nor probable cause, and was a violation and deprivation of the Constitutional rights of the Plaintiff as secured by the Fourth and Fourteenth Amendments of the Constitution of the United States, 42 U.S.C. 1983 AND 42 U.S.C. 1988.

**TWENTY-THIRD:** That as a proximate result of the aforesaid acts and omissions by the Defendants, the Plaintiff has suffered general and pecuniary damages.

**TWENTY-FOURTH:** That the acts of the individual defendants as described herein were intentional, wanton, malicious, oppressive, negligent, grossly negligent and/or reckless, thus entitling Plaintiff to an additional award of punitive damages against the said Individual Defendants in their individual capacities.

**TWENTY-FIFTH:** That the Defendants are liable to the Plaintiff pursuant to 42 U.S.C. 1983 and 1988.

**AS AND FOR A SECOND CAUSE OF ACTION  
AGAINST THE INDIVIDUAL DEFENDANTS**

**TWENTY-SIXTH:** That the Plaintiff repeats and realleges the allegations contained in paragraphs "**FIRST**" through "**TWENTY-FIFTH**" of the complaint with the same force and effect as if fully set forth herein.

**TWENTY-SEVENTH:** That the individual Defendants, acting in their individual capacities and under color of law, having conspired with others, reached a mutual understanding and intentionally acted to undertake a course of conduct that violated Plaintiff's civil rights, in violation and deprivation of the Constitutional rights of the Plaintiff as secured by the Fourth and Fourteenth Amendments of the Constitution of the United States, 42 U.S.C. 1983 and 42U.S.C. 1988.

**TWENTY-EIGHTH:** That as a proximate result of the aforesaid acts and omissions by the Defendants, the Plaintiff has suffered general and pecuniary damages.

**TWENTY-NINTH:** That the acts of the Individual Defendants as described herein were intentional, wanton, malicious, oppressive, negligent, grossly negligent and/or reckless, thus entitling Plaintiff to an additional award of punitive damages against the said Individual Defendants in their individual capacities.

**THIRTIETH:** That the Defendants are liable to the Plaintiff pursuant to 42 U.S.C. 1983 and 1988.

**AS AND FOR A THIRD CAUSE OF ACTION  
AGAINST THE INDIVIDUAL DEFENDANTS**

**THIRTY-FIRST:** That the Plaintiff repeats and realleges the allegations contained in paragraphs "**FIRST**" through "**THIRTIETH**" of the complaint with the same force and effect as if fully set forth herein.

**THIRTY-SECOND:** That the aforesaid actions of the individual Defendants constitute intentional infliction of emotional distress on the Plaintiff under the laws of the City, State of New York.

**THIRTY-THIRD:** That as a proximate result of the aforesaid acts and omissions by the Defendants, the Plaintiff has suffered both general and pecuniary damages and severe emotional distress.

**AS AND FOR A FOURTH CAUSE OF ACTION  
AGAINST THE INDIVIDUAL DEFENDANTS**

**THIRTY-FOURTH:** That the Plaintiff repeats and realleges the allegations contained in paragraphs "**FIRST**" through "**THIRTY-THIRD**" of the complaint with the same force and effect as if fully set forth herein.

**THIRTY-FIFTH:** That the individual Defendants were negligent, careless, reckless, and/or grossly negligent in the performance of their police duties in, searching, arresting, and imprisoning the Plaintiff.

**THIRTY-SIXTH:** That as a proximate result of the aforesaid acts and omissions by the Defendants, the Plaintiff has suffered both general and pecuniary damages.

**THIRTY-SEVENTH:** That the Defendant is liable to the Plaintiff under the laws of the City and State of New York.

**AS AND FOR A FIRST CAUSE OF ACTION  
AGAINST THE CITY OF NEW YORK**

**THIRTY-EIGHTH:** That the Plaintiff repeats and realleges the allegations contained in paragraphs "**FIRST**" through "**THIRTY-SEVENTH**" of the complaint with the same force and effect as if fully set forth herein.

**THIRTY-NINTH:** That as the employer of the individual Defendants at the times of their negligent conduct as set forth herein, the Defendant, CITY OF NEW YORK, is liable to the Plaintiff under the laws of the State of New York.

**FORTIETH:** That as a proximate result of the aforesaid acts and omissions by the Defendants, the Plaintiff has suffered general and pecuniary damages.

**AS AND FOR A SECOND CAUSE OF ACTION  
AGAINST THE CITY OF NEW YORK**

**FORTY-FIRST:** That the Plaintiff repeats and realleges the allegations contained in paragraphs "FIRST" through "FORTIETH" of the complaint with the same force and effect as if fully set forth herein.

**FORTY-SECOND:** That the Defendant, CITY OF NEW YORK, was negligent in the hiring, supervision, training, and instruction of the individual Defendants.

**FORTY-THIRD:** That as a direct and proximate result of the deliberate indifference, carelessness, and or recklessness of the Defendant, CITY OF NEW YORK, toward the proper training and supervision of its police officers/employees, the Plaintiff has been deprived of his rights under the Fourth and Fourteenth Amendments of the United States Constitution, Sections 1983 and 1988 of Title 42 of the United States Code, and under the laws of the City, and State of New York.

**FORTY-FOURTH:** That as a proximate result of the aforesaid acts and omissions by the Defendants, the Plaintiff has suffered both general and pecuniary damages.

**FORTY-FIFTH:** A jury trial of all issues is demanded.

**WHEREFORE,** Plaintiff requests judgment against Defendants, NEW YORK CITY POLICE OFFICER JAMES N. BAEZ, NEW YORK CITY POLICE OFFICER JOHN DOE 1,



NEW YORK CITY POLICE OFFICER JOHN DOE 2, NEW YORK CITY POLICE OFFICER JOHN DOE 3, as follows:

1. As against the individual Defendant, General and Compensatory damages in the sum of **ONE MILLION DOLLARS (\$1,000,000.00)** on the First, Second, Third, and Fourth causes of action,

2. As against the individual Defendant, punitive damages in the sum of **ONE MILLION DOLLARS (1,000,000.00)** on the First and Second causes of action, and

3. As against Defendant, CITY OF NEW YORK, General and Compensatory damages in the sum of **ONE MILLION DOLLARS (\$1,000,000.00)** on the First and Second Causes of Action asserted against it, and

4. Reasonable attorney's fees, pursuant to 42 U.S.C. 1988,

5. The costs of this action,

6. And such other and further relief as may be just and proper.

Dated: October 26, 2005  
Staten Island, NY

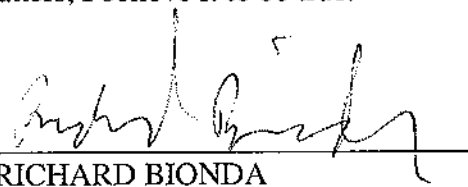


JAMES K. O'HALLORAN  
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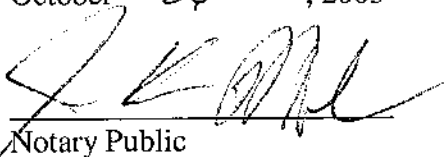
VERIFICATION

STATE OF NEW YORK                   )  
  : ss.:  
COUNTY OF RICHMOND               )

RICHARD BIONDA, above named being duly sworn, deposes and says: I am the Plaintiff in the within action; that I have read and know the contents of the foregoing Complaint; that the same is true to my own knowledge, except as to matters therein stated to be alleged on information and belief, and that as to those matters, I believe it to be true.

  
RICHARD BIONDA

Sworn to before me on  
October 26, 2005

  
Notary Public

JAMES K. O'HALLORAN  
Notary Public, State of New York  
No. 020H6068964  
Qualified in Richmond County  
Commission Expires Jan. 14, 2006